

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JEFFREY JOHN LOUT,

CAUSE NO. CV 05-67-M-LBE

Petitioner,

vs.

FINDINGS AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

STATE OF MONTANA, MIKE MAHONEY,
Warden, Montana State Prison,
JAMES MCDONALD, Warden, Crossroads
Correctional Center,

Respondents.

Currently pending before the Court is Petitioner Jeffrey John Lout's Motion to Dismiss on Basis of Default and Contempt, Request for Judgment. (Dkt. # 20). Petitioner is seeking default judgment against Respondent for failing to produce the transcript as requested in the Court's Order of March 6, 2006. (Dkt. # 13). Respondent did respond to that Order and indicated that the transcript had not been prepared. This response was sufficient given the current status of this case.

On May 8, 2006, this Court issued a Findings and Recommendation in which it recommended the dismissal of Mr. Lout's petition. As stated in that Recommendation,

After determining that the change of plea hearing had not been transcribed, the Court located the district court's opinion and order from the Supreme Court of Montana's website. That opinion along with the copy of the Second Amended Information provided by Petitioner

(Dkt. # 16-voluminous exhibits), has convinced the Court the transcript of the change of plea is unnecessary for this analysis.

(Dkt. # 19, p. 19).

Respondent's response to the Court's Order of March 6, 2006 was sufficient and the Court has issued a Findings and Recommendation that the transcript requested was unnecessary to the Court's determination that Mr. Lout's Petition be dismissed.

Accordingly, the Court enters the following,

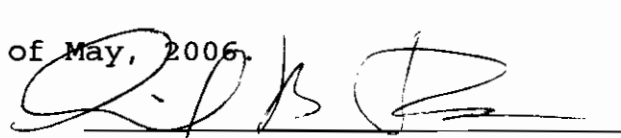
RECOMMENDATION

Petitioner's Motion to Dismiss on Basis of Default and Contempt, Request for Judgment (Dkt. # 20) should be **DENIED**.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND
CONSEQUENCES OF FAILURE TO OBJECT**

The Clerk of Court shall serve a copy of this Findings and Recommendation of the United States Magistrate Judge upon Petitioner. Petitioner is advised that pursuant to 28 U.S.C. § 636(b)(1), he has the right to file written objections to this Findings and Recommendation. Any objections to the Findings and Recommendation must be filed with the Clerk of Court within twenty (20) days after the date this Findings and Recommendation is signed, or objection is waived.

DATED this 26th day of May, 2006.



Leif B. Erickson
United States Magistrate Judge